

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v.

GERALD ANDREW DARBY,

Defendant.

)
)
)
)
)
)

Criminal No. 2:16cr36

UNOPPOSED MOTION FOR DISCOVERY PROTECTIVE ORDER

The United States of America, by and through its attorneys, Dana J. Boente, United States Attorney for the Eastern District of Virginia, and Elizabeth M. Yusi, Assistant United States Attorney, respectfully moves this Honorable Court for entry of a Discovery Protective Order. In support of this motion, the United States offers the following:

1. Defendant GERALD ANDREW DARBY was charged by Indictment on March 10, 2016 with five counts of Receipt of Child Pornography, in violation of 18 U.S.C. § 2252(a)(2) and three counts of Possession of Child Pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). The investigation of the defendant involved the defendant's alleged use of a particular website, referenced herein as "Website A," that was dedicated to child pornography.
2. Discovery materials the government intends to produce pursuant to its discovery obligations under Federal Rule of Criminal Procedure 16 include law enforcement sensitive items related to an ongoing investigation of the users of "Website A." The investigation continues into users of "Website A," which operated for the purpose of advertising and distributing child pornography. Thousands of users of "Website A," in the United States and abroad, remain under active investigation. The dissemination of the government's investigative materials, including reports of investigation and seized electronic data, could seriously jeopardize those continuing investigations.

3. The government requests that the Discovery Protective Order require that the defendant may not disseminate discovery items that include Website A's content, sealed court documents, and/or information pertaining to law enforcement investigative techniques used that the government is required to disclose to anyone other than counsel and members of the defendant's litigation and investigative team. As proposed in the Protective Order, defense counsel and the defendant's litigation team may show and display materials produced in discovery to the defendant, but may not provide a copy of materials produced in discovery to the defendant or third parties to keep and maintain in their possession. Further, defense counsel and the defendant's litigation team shall return materials produced in discovery to the United States Attorney's Office within 10 days upon conclusion of the case before this Court, or, if an appeal is taken, upon completion of such an appeal.

4. Any such materials produced in discovery that are filed with the Court in connection with pretrial motions, trial, sentencing, or other matter before this Court, shall be filed under seal and shall remain sealed until otherwise ordered by this Court. This does not entitle either party to seal their filings as a matter of course. The parties are required to comply in all respects to the relevant local and federal rules of criminal procedure pertaining to the sealing of court documents.

5. Any violation of any term or condition of the Proposed Order by the defendant, the defendant's attorney(s) of record, any member of the defense team, or any attorney for the United States Attorney's Office for the Eastern District of Virginia may be sanctioned by contempt of court, and/or may be subject to monetary or other sanctions as deemed appropriate by this Court.

6. If the defendant violates any term or condition of this Order, the United States reserves its right to seek a sentencing enhancement for obstruction of justice, or to file any criminal charges relating to the defendant's violation.

7. This Motion and the proposed Protective Order is submitted for the purpose of ensuring that law enforcement sensitive information contained in discovery materials are not disseminated to third parties.

8. The undersigned has provided copies of the instant motion and proposed Protective Order to defense counsel for review. Counsel has confirmed that the defendant does not object to the entry of the proposed Protective Order.

For these reasons, the United States respectfully requests this Court to authorize the proposed Discovery Protective Order.

Respectfully submitted,
Dana J. Boente
United States Attorney

By: _____/s/_____
Elizabeth M. Yusi
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
101 West Main Street, Suite 8000
Norfolk, Virginia 23510
Phone: (757) 441-6331
Facsimile: (757) 441-6689
E-mail: elizabeth.yusi@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send an electronic notification of such filing to the following:

Rodolfo Cejas, Esq.

_____/s/_____
Elizabeth M. Yusi
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
101 West Main Street, Suite 8000
Norfolk, Virginia 23510
Phone: (757) 441-6331
Facsimile: (757) 441-6689
E-mail: elizabeth.yusi@usdoj.gov